UNITED STATES BANKRUPTCY COURT

DISTRICT OF HAWAII

In re THOMAS K. TANIGUCHI and JAN Y. TANIGUCHI, Debtors.	Case No. 03-02581 Chapter 13 Re: Docket Nos. 129 and 134

MEMORANDUM DECISION ON COMPENSATION APPLICATIONS

This case should have been a fairly simple chapter 13 proceeding. Because of the debtors' failure to file timely tax returns and their decision to change counsel, however, it has taken too long and cost too much.

The case is nearing its conclusion. The trustee holds enough money to pay off the chapter 13 plan. The remaining dispute concerns the requests for fees by the debtors' current and former counsel.

The debtors commenced the case on August 29, 2003. Their principal assets were a restaurant business which they operated as sole proprietors and a residence. Their debts included a mortgage on the residence, unpaid state and federal taxes, delinquent rent for the business premises, and credit card bills.

The debtors filed their initial chapter 13 plan with their petition on August 29, 2003. The state and federal taxing authorities objected to confirmation on the grounds that, contrary to this district's standard requirements, the debtors had not filed all required tax returns.[1] The chapter 13 trustee also objected on the grounds that the debtors had not provided the information and completed the forms which are required in this district and had not timely begun their plan payments. The plan confirmation hearing was continued three times to give the debtors a chance to correct these failings.

The debtors filed an amended plan on March 12, 2004, nearly six months after they commenced their case. The amended plan did not solve any of the problems. The taxing authorities objected again because the debtors still had not filed all required tax returns. The trustee also objected because the debtors had failed to file required financial reports concerning their business and had failed to provide evidence of appropriate business insurance to the trustee. The court denied confirmation of the amended plan on April 29, 2004. In accordance with standard practice in this district, the order denying confirmation provided that the case

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[1]This court holds that a debtor cannot file a chapter 13 plan in good faith unless the debtor has filed all required pre-petition tax returns. This rule is based on two reasons. First, the taxing authorities cannot file an accurate proof of claim unless the debtor has filed the tax returns. The failure to file the returns thus impairs the ability of specific parties in interest to participate meaningfully in the case. This is inconsistent with the debtor's obligation to act in good faith. Second, the purpose of chapter 13 is to permit the debtor's financial rehabilitation. Filing of tax returns is an indispensable part of the debtor's return to financial responsibility. A debtor who fails to file all required tax returns is not making a good faith effort to regain the debtor's overall financial footing.

would be dismissed unless the debtors either filed an amended chapter 13 plan or converted their case to chapter 7 within fifteen days.

The debtors filed a second amended plan on May 13, 2004. The debtors estimated that, after secured and priority claims were paid, general unsecured creditors would receive ten percent of their allowed claims. The taxing authorities and the trustee renewed their objections because the debtors had failed to rectify the deficiencies of their prior plan and had failed to file a certificate showing proper service of the second amended plan. After yet another hearing and continuance, the debtors finally resolved the objections of the trustee and the taxing authorities. In the meantime, a new problem had arisen; the mortgagee objected to confirmation on the ground that the residence was worth more than the debtors proposed.

At about this time, the debtors replaced their initial attorney, Lawrence D. McCreery, with Terry Nui Yoshinaga. Ms. Yoshinaga is apparently a relative of the debtors. Because Ms. Yoshinaga lacks bankruptcy experience, she consulted with an experienced bankruptcy practitioner, Colin Kurata.

To resolve the factual dispute concerning the valuation of the residence, the court scheduled an evidentiary hearing. On the eve of the hearing, the parties settled the valuation dispute. The court confirmed the second amended plan on December 6, 2004, more than fifteen months after the case began.

Shortly thereafter, the debtors decided to sell the residence (rather than retain it as the plan contemplated) and use the proceeds to pay off their mortgage and chapter 13 plan. The order approving the sale was entered on April 8, 2005.

Both Mr. McCreery and Ms. Yoshinaga have applied for allowances of compensation and expenses. Mr. McCreery seeks fees of $7,403.75 and expenses of $281.05. Ms. Yoshinaga claims that she and her co-counsel, Mr. Kurata, are entitled to fees of $29,232.50 and expenses of $3,420.83,[2] but they seek an allowance of $15,000.00, less than half of that amount.

According to the trustee, $18,413.09 will be available for payment of attorneys' fees after all other administrative expenses and secured and priority claims are satisfied and unsecured creditors receive the promised ten percent return. The applicants are all apparently willing to reduce their fees to the extent necessary to preserve the ten percent dividend to general unsecured creditors.

The debtors object strenuously to Mr. McCreery's request. They claim that Mr. McCreery did not adequately inform them of their obligations as

[2]The expenses include $1,894 payable to two appraisers. The debtors never sought court approval to retain an appraiser and compensate him or her out of the estate. The reduced request waives any expense reimbursement.

chapter 13 debtors and did not diligently prosecute their case. The record of this case, including the plan and other documents which the debtors signed and Mr. McCreery's time records of services performed, disproves these allegations. The primary cause of the delays in this case was the debtors' failure to complete their tax returns on time. Mr. McCreery's time records show that he discussed this problem with the debtors and, in any event, debtors do not need the assistance of bankruptcy counsel to know that tax returns must be filed when due.

Although most of the debtors' objections lack merit, some of the hours claimed by Mr. McCreery should not be allowed. On October 24, 2003, Mr. McCreery spent three hours preparing a motion to assume the lease of the business premises. Because the lease provided for a month-to-month tenancy, the motion to assume was unnecessary and the debtors soon withdrew the motion. On July 5, 2004, Mr. McCreery billed 3.6 hours, a portion of which was spent drafting a third amended plan. That plan was never filed and does not seem to have been necessary to deal with the objections which were then on file. The time entry for that date does not (contrary to this court's standard requirements) itemize the time by task but rather lumps the entire day's services together. 2.5 hours should be deducted. These adjustments total 5.5 hours or $907.50 (at Mr. McCreery's rate of $165 per hour, which I find reasonable) plus general excise tax for a total reduction of $945.31.

The debtors do not object to Ms. Yoshinaga's request, but the court has an independent duty to scrutinize it. A significant portion of Ms. Yoshinaga's time should not be allowed. On August 30, 2004, Ms. Yoshinaga billed two hours to "review files." The cryptic description makes it impossible to find that this charge is reasonable. The timesheets include numerous entries for telephone calls with the debtors, Mr. Kurata, the appraisers, and others for repeated discussions of the same topics. Most importantly, the total amount of fees requested, even after the 50% discount, is far too high considering the modest size and relative simplicity of this case. Ms. Yoshinaga's zeal and devotion to her clients' interests are commendable, but her relative inexperience in bankruptcy matters caused her to spend too much time on the case and resulted in the unnecessary expense of a third, more experienced attorney, Mr. Kurata.

Taking into consideration all of the factors set forth in section 330 of the Bankruptcy Code, I find and conclude that Mr. McCreery should be allowed fees and general excise tax in the amount of $6,458.44 and expenses in the amount of $281.05 and that Ms. Yoshinaga and her co-counsel should be allowed fees (including general excise tax) in the amount of $11,673.60. The total allowed amounts are $18,413.09, which equals the amount of money available after paying unsecured creditors their promised dividends.

The total amount of compensation and reimbursement allowed is well in excess of the amounts that should ordinarily be incurred in a case like this one. I am approving this much only because it will not reduce the promised distribution to unsecured creditors.

DATED: Honolulu, Hawaii, June 16, 2005.

/s/ Robert J. Faris
United States Bankruptcy Judge